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**ARIZONA CORPORATION
COMMISSION**

February 21, 2013

Re: Policy Statement on Income Tax Expense for Tax Pass-Through Entities
Docket No. W-00000C-06-0149

Dissent by Commissioner Brenda Burns

I have not been persuaded that the Commission's constitutional duty to set "just and reasonable" rates should include the recovery of a utility shareholder's personal income taxes. "Just and reasonable" rates allow a utility to recover the expenses of a utility plus an opportunity to make a fair profit on its investment. Asking ratepayers to pay personal income taxes for shareholders of utilities organized as subchapter "S" corporations or limited liability corporations (LLCs) (aka "pass-through entities") is neither justifiable nor good public policy. Personal income taxes are not a utility expense.

It is my obligation to consider the interests of both the utility and ratepayers. I do not feel this decision strikes the right balance. There are many ways to ensure that utilities receive a fair amount of revenue to cover its prudently incurred expenses but requiring ratepayers to pay a shareholder's personal income taxes is not a proper solution. Therefore, I must dissent.

Currently, all C corporations are treated equally and all pass-through entities are treated equally. Utilities voluntarily organize as pass-through entities or C corporations for a variety of reasons. Evidence has been presented that shows many utilities have chosen to be pass-through entities because of the tax advantages, including avoidance of the 'double-taxation' faced by C corporations.

However, C corporations and pass-through entities are not treated on equal footing because they are fundamentally different from each other. Ratepayers do not reimburse a C corporation's shareholders for their personal income taxes. This policy change requires ratepayers to reimburse shareholders of pass-through entities for their personal income taxes even though no tax was paid by the company itself.

Indeed, there are necessary water industry reforms that the Commission should examine. I am concerned with how water companies can ably deal with issues such as increased expenses, arsenic remediation requirements, under-recovery of authorized revenues, aging infrastructure and needs for new wells. However, this Decision may result in higher rates for many ratepayers but it does little or nothing to address those issues and may even harm the debate on these potential water utility reforms.

While I do believe that utilities must be compensated for just and reasonable expenses I do not believe this Decision sets a policy that does so in a fair manner.


Brenda Burns
Commissioner